Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets	)))	MB Docket No. 04-256

COMMENTS OF BELO CORP.

Belo Corp. ("Belo") hereby submits its comments in response to the Commission's August 2, 2004 *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding.[1] Belo submits that television joint sales agreements ("JSAs") can provide significant efficiencies and important public interest benefits, enhancing the ability of the brokered stations to compete and provide service to their communities of license. Accordingly, the Commission should not adopt unnecessary attribution policies that will curtail their use.

I. THE PUBLIC INTEREST BENEFITS OF JOINT SALES AGREEMENTS IN LOCAL TELEVISION MARKETS SIGNIFICANTLY OUTWEIGH ANY POTENTIAL COMPETITION CONCERNS

A. JSAs enhance the quality and quantity of programming of brokered stations

Belo "brokers" television stations pursuant to JSAs in three television markets: Seattle-Tacoma, Washington; Portland, Oregon; and Houston, Texas. In each case, Belo's JSA "partner

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[1] Belo has been in the media business for 162 years. The Company began publishing its first newspaper in 1842, entered the radio business in 1922, and received its first television license in 1950 to operate WFAA-TV in Dallas-Fort Worth. Today, Belo owns and operates a diversified group of television broadcasting, newspaper publishing, cable news, and interactive media assets in seventeen markets throughout the nation. In addition to WFAA-TV, Belo owns eighteen other television stations across the country, reaching nearly 14% of U.S. television households. Belo also publishes respected daily newspapers in three major markets, including *The Dallas Morning News*, *The Providence Journal*, and the Riverside (CA) *The Press-Enterprise*. Belo has regularly participated in FCC and other proceedings relating to the television industry and the critical role played by broadcasters in the burgeoning media marketplace.

station" is the Paxson Communications Corporation owned and operated station in the market. In addition, Belo has entered into a JSA involving an outlying full power and several low power television stations in Portland and surrounding areas in Oregon and Washington. Prior to signing the JSAs with Belo, none of the brokered stations produced local newscasts for its community of license. As a result of efficiencies created by these JSAs, however, Belo now provides original newscasts to the brokered station in Portland and repurposed newscasts to the brokered station in Houston. Indeed in Portland, Belo has hired six additional employees and invested over $600,000 to provide original newscasts to the brokered station. These arrangements, made possible by the JSAs, provide viewers with an increased number of outlets and staggered times to view local news, and offer very specific examples of the significant public interest benefits that television JSAs can bring to local communities.[2]

B. <u>JSAs provide much-needed support to nascent stations and networks that otherwise might not survive in today's competitive market</u>

There are significant financial costs inherent in ownership of a television station in today's competitive marketplace, including among other things the considerable expenses associated with equipment purchases and other upgrades required to provide digital television service. These DTV transition expenses can be extremely burdensome and sometimes prohibitive for broadcasters. JSAs, however, generate capital and provide fledgling stations with a means by which to defray some of these costs and make the DTV conversion feasible. Moreover, JSAs provide weaker stations with the use of facilities and support services of more

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[2] In Portland, for example, not only have Belo and Paxson provided viewers with an additional local newscast, but that newscast gives viewers a second local option at 10 p.m. This additional offering is clearly beneficial to viewers in the local community and fosters the agency's competition and diversity goals.

experienced stations which would not otherwise be affordable, create operating efficiencies, and reduce overall station expenses.

As noted above, the brokered station in three of the JSAs to which Belo is a party is licensed to an affiliate of Paxson Communications Corporation, owner of the newest of the seven national English-language television networks. Pursuant to the JSAs, drawing on its years of experience and the efficiencies of a larger operation and staff, Belo provides advertising sales assistance,[3] local news programming (in two of the three markets), certain technical services, and marketing services to the brokered stations, all at a level of quality that the stations would not otherwise be able to afford. With these services provided by Belo, Paxson can focus on provision of network and other original programming, and the stations can function more efficiently and better serve their communities. The JSAs thus bolster the economic viability of these smaller stations and help ensure that the nascent PaxTV Network with which they are affiliated remains a viable alternative for television viewers and advertisers.

C. Attributing JSAs would jeopardize the public interest benefits they have made possible

Currently, the Commission's rules permit duopolies only in markets with eight or more television stations, subject to the top four restriction. Consequently, in many markets there is no opportunity for a broadcaster to own or even to enter into a local marketing agreement ("LMA") with a second television station. If the Commission were to determine that television stations brokered pursuant to JSAs should be attributable to the brokering party, many such arrangements would have to be terminated, since attribution would result in violations of the Commission's local media ownership rules or preclude other permissible combinations. Termination of these

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[3] Paxson generally sells all network time and some non-network time on each of the stations. Belo is the agent for local sales and may also sell some non-network national or regional time.

relationships would mean an end to the efficiencies created thereby, likely discontinuance of the local newscasts aired on the brokered stations, an inevitable increase in operating costs, and potentially irreparable harm to the licensee stations. Rather than furthering the FCC's competition or diversity goals, attribution of JSAs thus would have the opposite effect, jeopardizing smaller stations and cutting off an opportunity for growth in the amount and quality of programming available to local audiences.

II. THE FCC'S OWN RULEMAKING DECISIONS DEMONSTRATE THAT THE MARKETS FOR RADIO AND TELEVISION ARE VASTLY DIFFERENT AND WARRANT SEPARATE TREATMENT

Television and radio broadcasters compete in two distinct product distribution markets – the overall market for video programming and the market for audio programming. Because of fundamental differences in the nature of these markets, competition for local audience and advertising sales by video programming providers is significantly different from competition in radio programming sector. Principal among the distinguishing characteristics are the significant market share gains made by alternative video programming delivery services—particularly cable and direct broadcast satellite ("DBS") sources—in local markets. Comparable strides by competing delivery services have not been made in the market for radio programming.

Since its inception, non-broadcast television programming has gained significantly in popularity compared to over-the-air programming to the point that in 2002, for the first time, cable television had more primetime viewers on average over the course of the year than broadcast programming.[4] Audience shares of broadcast television stations have continued to decrease as cable and DBS penetration and the number of cable channels and other non-

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[4] *See 2003 In the Matter of 2002 Biennial Regulatory Review*, 18 FCC Rcd. 136220, ¶124 (2003); *affirmed in part, remanded in part*, *Prometheus Radio Project v. F.C.C.* 373 F. 3d 372 (3rd Cir. 2004) *(the "Ownership Order")*. In 2002, cable programming had a 48% share and broadcast programming had a 46% share.

broadcast networks continue to increase.[5] Not only are the number of alternatives to broadcast programming consistently rising, but the range of methods by which to receive such programming is also growing. Eighty-five percent of American households now subscribe to television programming supplied by multichannel video programming delivery systems (MVPDs) – mainly cable and DBS.[6]

In contrast, the radio market has not yet been significantly impacted by alternative nationally-based delivery services. Satellite radio providers such as XM and Sirius have begun to gain subscribers in some areas, but they are far from achieving a material level of penetration in most markets.[7] The vast majority of the U.S. population does not subscribe to a satellite radio service, and the Commission has concluded that satellite radio is not yet a good substitute for broadcast radio for the overwhelming majority of listeners.[8] (Moreover, many of the programming offerings on XM and Sirius are commercial-free and therefore do not compete in the local advertising market.) Internet audio streaming may be a substitute for broadcast radio when the listener is working on a computer or in a small office environment. The most significant portion of radio listening, however, occurs while the listener is driving or otherwise outside of the office or home. Therefore, Internet audio streaming is not now a substitute for broadcast radio for a significant portion of the audio listening market.

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5 *See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 19 FCC Rcd 1606, ¶ 94 (2004).

6 *See Ownership Order at* ¶61.

7 As of April 2003, there were over 500,000 subscribers to satellite radio. *See Id. at* ¶127. For a specific local example, based on national subscriber estimates of 1,600,000 XM subscribers and 351,000 Sirius subscribers, satellite radio would penetrate only approximately 2.7% of the Houston market (in which Belo is party to a television JSA), whereas cable and satellite collectively serve 74.7% of the total television households in the market.

8 *See Id. at* ¶245.

Additionally, local ownership rules are different for radio and television station ownership and impact a broadcaster's ability to compete effectively in the local market. Local radio ownership rules already permit common ownership of up to eight stations in certain markets, allowing radio station group owners to maximize efficiencies. On the other hand, as noted above, local television ownership rules limit parties to the ownership of a single station in many markets and at most two in even the largest markets. JSAs, therefore, are the only remaining opportunity for many television station owners to benefit from the efficiencies described above.

In short, the competition levels, diversity of outlets and programming sources currently existing, and local ownership rules in effect in the television delivery marketplace are quite different from those found in the audio delivery marketplace. Television broadcasters face robust and rapidly growing competition for audiences and local advertising inventory from other distribution services in addition to their local broadcast rivals, whereas the radio market is still dominated by locally-based over-the-air outlets. Recognizing this increasingly competitive landscape, some broadcasters, and smaller independent stations in particular, have entered into JSAs with more established and experienced broadcasters in order to compete more effectively. JSAs help television broadcasters build a stronger competitive position in the overall market for the delivery of video programming. In fact, in the increasingly multi-channel, multimedia environment in which television broadcasters compete, single-channel outlets without the ability to enter into JSAs or other arrangements to increase efficiency could well be at a crippling competitive disadvantage.

III. JSA BROKERS DO NOT EXERT UNDUE INFLUENCE OVER BROKERED STATIONS

A. <u>In Belo's experience, except for the possible addition of local news, programming on a brokered station is not significantly affected by the broker</u>

The Commission's attribution rules are intended to identify interests in licensee stations that provide their holders with "influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."[9] In the *Ownership Order,* the Commission correctly noted that "[n]othing in the record indicates that licensees abdicate control over stations that are subject to JSAs."[10] Yet the Commission concluded that in the radio industry "JSAs have the same potential as LMAs to convey *sufficient control over core operations of a radio station* to raise significant competition concerns warranting attribution" (emphasis added).[11] The agency also found that "the threat to competition and the *potential impact on the influence over the brokered station* outweighed any potential benefits that non-attribution of radio JSAs may have on the radio industry" (emphasis added).[12]

The Commission's concern that a television JSA broker may have comparable potential to exert impermissible influence over a brokered station's operations is unwarranted. Given the strong competition and number of viable alternatives existing in the video marketplace as

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[9] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*; 14 FCC Rcd 12559, ¶ 1 (1999), *on recon.*, 16 FCC Rcd 1097 (2001).

[10] *Ownership Order* at ¶318.

[11] *NPRM at* ¶ 9.

[12] *Id. at* ¶ 9.

discussed above, concerns about programming control or influence simply are not as significant an issue as they might be in the audio marketplace.

Radio broadcasters have more relative influence and control in the audio programming market in part because alternative nationally-based distribution platforms and programming networks are not currently a significant factor. Further, in addition to local programming, television programming typically includes programming provided by networks and/or national syndicators, whereas radio programming tends to be produced primarily at the local level. Since competition for local audiences is different in video and audio programming, a brokering station's potential for influence and control over programming is different – and considerably less – in the context of the broader video programming market.

Moreover, in the radio arena, the Commission expressed concern that because a radio station's primary – and often sole – revenue source is advertising (a broker function under JSAs), brokers could exert undue control over a radio station's operations and programming.[13] In the television arena, in addition to advertising revenue, stations may receive network compensation and, in some cases, retransmission consent payments (which are related to the licensee and not to broker functions under a JSA). Since JSA brokers typically are involved only in the non-network advertising portion of a television station's revenue stream and other sources of revenue are remitted directly to licensees, the potential for influence is less and the Commission's concern that a licensee will be unable to avoid a broker's influence is unwarranted in the case of television JSAs.

In Belo's experience, the brokered station retains ample control over the station's operations and programming and, at all times, retains the right to reject any commercial matter,

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[13] *See Id. at* ¶¶ 13 and 14.

programming or other material supplied by the broker that the licensee finds to be unsuitable. In fact, many brokers, including Belo, must comply with the brokering station's often stringent advertising and programming content restrictions and other standards set forth in the JSAs. Accordingly, Belo submits that existing ownership limits, including the attribution of LMAs, together with antitrust review where appropriate, are more than sufficient to address the Commission's concerns.

B. If the Commission decides to attribute JSAs to the broker, it should fully grandfather JSA agreements in existence at the time of any rule change

Finally, should the Commission decide to attribute brokered stations to their JSA partners, it should fully grandfather existing television station JSAs that would otherwise cause the brokering party to exceed local ownership limits. When modifying its media ownership rules in the past, the FCC has consistently grandfathered existing combinations, recognizing that mandating divestiture would eliminate the public interest benefits associated with such combinations and severely disrupt the business operations of companies holding such combinations.[14] As shown above, television JSAs have resulted in substantial public interest benefits and in some cases have allowed brokered stations to continue operating without fear of financial problems or bankruptcy, all without causing any appreciable countervailing harms. Moreover, parties to existing JSAs have relied on the FCC's express determination, as recently

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[14] *See, e.g.*, *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903, 12965 (1999) (television LMAs); *id.* at n.97 (television duopolies); *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559, 12630 (1999) (cable/broadcast combinations and cable/MDS combinations); *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules,* 50 FCC 2d 1046, 1054 (1975) ("*Multiple Ownership Second Report and Order*"), *recon.* 53 FCC 2d 589 (1975), *aff'd sub nom.*, *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (newspaper/broadcast combinations except in limited "egregious" cases). Moreover, both the Commission and the courts have noted that divestiture is a harsh remedy, and requires serious consideration of the adverse impact on industry structure. *Amendment of Part 76, Subpart J of the Commission's Rules and Regulations Relative to Cable Television Systems*, 97 FCC 2d 65, 75-76 (1984); *Timken Roller Bearing Co. v. United States*, 341 U.S. 593, 603 (1951).

as August 1999, that television JSAs did not convey sufficient influence to warrant attribution. Particularly in these circumstances, Belo submits, the Commission cannot justify a departure from its longstanding practice of grandfathering existing combinations.[15]

IV. CONCLUSION

For the foregoing reasons, Belo submits that the Commission should continue its current policies under which television JSAs are not attributable to the brokering parties. The nature and level of competition in the television delivery marketplace is fundamentally different from that in the audio delivery marketplace, and it is therefore inappropriate to apply the same attribution rules to television as to radio. Moreover, brokering stations that are parties to television JSAs are not in a position to exert sufficient influence or control over the licensee and the brokered station to warrant attribution under the Commission's rules. In any event, any concerns with respect to the potential for a broker's influence are far outweighed by the significant public interest benefits provided to competitively weaker television stations pursuant to JSAs.

Respectfully submitted,

BELO CORP.

By: /s/

Guy H. Kerr
Senior Vice President/Law and Govt.
DeDe Lea
Vice President/Government Affairs
BELO CORP.
400 South Record Street
Dallas, Texas 75202
214.977.6606

Richard E. Wiley
James R. Bayes
Jessica N. Rosenthal
of
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
202.719.7000
Its Attorneys

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[15] Indeed, as the Commission is well aware, when it departs from precedent it "must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored." *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir.), *cert. denied*, 403 U.S. 923 (1971).